IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1033 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ISHWARLAL THAKORDAS BANGALI

Versus

PATEL VALJIBHAI NATTHUBHAI

Appearance:

MR SN SHELAT for Petitioners

MR VJ DESAI for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 03/04/2000

ORAL JUDGEMENT

#. This is a Revision Application filed by the original plaintiffs who had filed Small Causes Suit No. 984 of 1976 in the court of the learned Additional Judge, Small Causes at Surat. It is the case of the plaintiffs that

they are the owners of the property in Ward no.7 Nondh nos 1520/1521 situated in the city of Surat. Defendant is the tenant of the property bearing Nondh No.1521 at the monthly rent of Rs.315/-. According to the plaintiffs, defendant no.1 was in arrears of rent from 1.7.1973 and therefore a demand was sent to him on 5.4.1976. Defendant no.1 did not comply with the same and therefore, according to the plaintiffs the defendant no.1 was required to be evicted on the ground of arrears of rent. It is also the case of the plaintiffs that defendant no.1 has illegally sub let the premises to defendant no.2. Therefore, on the aforesaid ground the plaintiffs filed the suit for possession.

#. The defendant nos 1 and 2 appeared in the suit and filed their written statement at exhs.15 and 16. It was contended that defendant no.1 is the tenant of the property bearing Nondh No.1521 at the rate of Rs. 210/p.m. It was denied that any additional room was given to the defendant no.1 and that the rent on that ground was increased to Rs. 315/- p.m. but it was Rs. 210/-. It was stated that the contractual rent of Rs. 210/- is the standard rent and it is excessive. According to the defendant no.1 after the receipt of the demand notice he had preferred Application No. 479 of 1976 for fixation of standard rent within a period of one month from the date of receipt of the notice. According to him he had tendered the rent for the period of 9 months but the plaintiff had not given credit of the said amount. According to him, he has paid the amount upto 30.9.94 and rent is due from 1.10.74. That after the receipt of the demand notice he has tendered all the arrears of rent along with the reply but the advocate for the plaintiffs refused to accept the same. According to the defendant no.1 he was always ready and willing to pay the rent. He also denied the allegation about subletting According to him, defendant no.2 is his cousin brother and that he was never in occupation of the part of the suit premises. Aforesaid suit for possession was accordingly denied by the defendant.

#. The Trial Court consolidated the Small Cause Suit No.84 of 1976 with the Rent Application No. 479 of 1976 and after recording the evidence and after hearing the learned advocates for both the sides came to the conclusion that the plaintiff is not entitled to get possession of the suit premises on the ground of subletting. Therefore, the suit for possession was dismissed by the Trial Court. However the Trial Court passed a decree for Rs. 828/-against the defendant no.1 towards arrears of rent. The standard rent of the suit

premises was fixed at Rs.23/- in the Rent Application No.479 of 1976. Accordingly the suit as well as the standard rent application were disposed of by the Trial Court.

#. The original plaintiffs preferred Regular Civil Appeal No. 147 of 1981 before the District Court, Surat challenging the decree of the Trial Court. The learned Assistant Judge, Surat who heard the said appeal, ultimately dismissed the appeal on 4.3.1983. Aforesaid decree of the Appellate Court is impugned in the present Revision Application by the original plaintiffs-landlords.

#. At the time of hearing of this CRA it was argued by Mr. S.N.Shelat for the petitioners that the defendant no.1 has parted with the possession of the suit premises in favour of defendant no.2 who is his cousin brother. According to him, therefore, the decree under section 13(1)(e) of the Bombay Rent Act was required to be passed. So far as the case regarding sub letting by defendant no.1 to defendant no.2 is concerned , the Appellate Court has discussed the entire evidence of the parties on the aforesaid question in para 8 of his judgment. It was found that the defendant no.2 had stayed for about 2-3 months in the suit premises for the purpose of delivery of his wife. Aforesaid version of the defendant is also corroborated by the evidence of neighbour one Dhansukhlal Thakore who is examined at exh.55. It transpires from the evidence that the defendant no.2 had come to stay with the defendant no.1 for a short period for the purpose of delivery of his wife and after the delivery of his wife, defendant no.2 had gone back to his residence which he was occupying as a tenant. Defendant no.2 was occupying his own rented premises in Gotalawadi, Surat. At the time of Court Commissioner's inspection it was found that on the ground floor, there was cot of the wife of the defendant no.2. From the said circumstances it was argued by the learned advocate for the original plaintiff that possession is handed over to the defendant no.2 by defendant no.1 . However it is not in dispute that the wife of defendant no.2 had delivered a child and she was kept in the premises in question for the purpose of treatment. Special diet was required to be prepared for her and for that purpose separate cooking was carried on in the part of the premisses. If the brother and his wife were allowed to stay by the tenant for the purpose of delivery of his brother's wife and for that purpose a partition is put for the purpose of privacy of brother's wife of defendant no.1 from the same it can never be said that

the tenant has parted with the possession. Mere parting of possession itself is not enough but the intention behind the same is required to be considered for the purpose of coming to the conclusion that there was subletting. In the facts and circumstances, simply because the partition is made and cooking facilities are carried ion by the defendant no.2 because of the delivery of his wife, it cannot be said that defendant no.1 has parted with the possession of the premises to the defendant no.2.

#. As a mater of fact it can never amount to parting of possession because the defendant no.1 has not vacated the suit premises and he is already residing there. But only a small room is carved out by a small partition in the existing room so that privacy of his brother's wife is not disturbed especially when she was taking treatment after her delivery in the suit premises. In the facts and circumstances of the case therefore, it cannot be said to be parting with the possession or subletting by defendant no.1 to defendant no.2. It has come in evidence that subsequently defendant no.2 went back with his wife and child to his own rented premises and he had come here only for a temporary period as aforesaid. It is not that defendant no.1 vacated the suit premises while allowing defendant no.2 to reside in the suit premises. In that view of the matter it cannot be said that the courts below have committed any error in reaching to a finding of fact from the evidence on record that there is no subletting by defendant no.1 to defendant no.2. Said finding can never be said to be perverse or illegal or contrary to the evidence on record. There is therefore, no substance in the argument of Mr Shelat that there is a subletting by defendant no.1 in favour of defendant no.2.

#. The next ground for filing the suit was arrears of rent. It was argued by Mr. Shelat for the petitioners that the defendant no.1 was in arrears of rent from 1.7.73. The Appellate Court has categorically found in para 10 of his judgment that on a close perusal of the record in the nature of receipt book counterfoils produced at exh.37 they are fabricated by the plaintiff. Both the courts below have found that the counter foil at exh. 37 is got up. Both the courts below found that the defendant no.1 has paid rent upto 30.9.73 and the rent is due from 1.10.74. The Appellate Court has placed reliance upon the MO coupons at exh.. 46 which proves that the defendant no.1 sent Rs. 1890/towards rent from 1.1.74 to 30.9.74. Defendant no.1 had sent the aforesaid amount of Rs. 1890/- by three money orders. Even though the rent was paid for 9 months, the plaintiff credited

the rent only for 6 months. It is found in para 10 by the Appellate Court that the rent was due for 9 months at the time of the suit notice and the defendant had sent the entire amount by MO exh.46. On that basis there would not be any arrears of rent and therefore, there was no cause of action for filing a suit on the ground of arrears of rent. Both the courts below have also fixed the standard rent of the suit premisses at Rs.23/p.m. Formerly standard rent was fixed by consent in Standard Rent Application No. 925 of 1970. However, it was found by the Appellate Court that the application for fixing standard rent was filed by the landlord and it was fixed by practicing fraud on the court. Earlier application was filed by the landlord when there was no dispute of standard rent between the parties. It was found that it was a collusive application. The Appellate Court has also found in para 14 of its judgment that the plaintiff no.1 had practiced fraud on the court by alleging that the contractual rent of the suit premises was Rs. 225/p.m. and thereafter by compromise it was fixed at Rs.210/p.m. There was no such lis between the parties in 1970 and in the absence of any dispute between the parties in 1970 there was no question of fixing any standard rent. Though there was dispute of standard rent, defendant no.1 was regularly depositing the rent. Both the courts below have found that Rs.23/was the standard rent which is based on appreciation of evidence. Thus while sitting in revision this court cannot reappreciate the evidence and cannot take a contrary view so far as the question of fixation of standard rent is concerned. In that view of the matter I do not find any substance in this Revision Application and the same therefore, requires to be dismissed. Revision Application is dismissed. Rule is discharged. No order as to costs.

(P.B.Majmudar.J)

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